IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 25745 of 2004(M)

PETITIONERS:

1.KUNCHU MUTHALIYAR,
S/O. KARUPPAN MUTHALIYAR, AANDITHARA,
NALLEPALLY VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.

2.ARUNACHALA MUTHALIYAR
S/O. ARUCHAMI MUTHALIYAR, SCHOOL TEACHER,
AANDITHARA, NALLEPALLY VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:

1.UNNIKRISHNAN, S/O. APPU,
KALAYAKULAMBU NALLEPALLY VILLAGE, CHITTUR TALUK.

2.VELAYUDHA MUTHALIYAR
S/O. KATHAN MUTHALIYAR AANDITHARA,
NALLEPALLY VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.

R1 BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 25745/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PLAN AND REPORT DATED 9.7.2003 SUBMITTED BY THE ADVOCATE COMMISSIONER.

EXT.P2: TRUE COPY OF THE WORK MEMO SUBMITTED BY THE PETITIONERS BEFORE THE ADVOCATE COMMISSIONER DATED 24.7.1997.

EXT.P3: TRUE COPY OF THE WORK MEMO SUBMITTED BY THE PETITIONERS BEFORE THE ADVOCATE COMMISSIONER DATED 11.1.2003.

EXT.P4: TRUE COPY OF THE OBJECTIONS TO THE COMMISSIONER REPORT AND PLAN DATED 1.10.2003 SUBMITTED BY THE PETITIONERS.

EXT.P5: TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF I.A.2030/2003 IN O.S.NO.328/97 FILED BY THE PETITIONERS DATED 1.10.2003.

EXT.P6: TRUE COPY OF THE ORDER DATED 6.7.2004 IN I.A.NO.2030/03 IN O.S.NO.328/97 PASSED BY THE MUNSIFF COURT, CHITTUR.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 25745 of 2004

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Dated: 28th May, 2007

JUDGMENT

Defendants 1 and 2 who filed an application for setting aside the Commissioner's report and plan, is aggrieved by Ext.P6 order passed by the learned Munsiff on their application and has filed this Writ Petition under Article 227 of the Constitution for setting aside Ext.P6.

2. Heard Mr.P.R.Venkatesh, counsel for the petitioners and Mr.Sajan Varghese, counsel for the 1st respondent.

3. The commission report was sought to be set aside by the defendants on various reasons. The first reason was that the Advocate Commissioner did not report on the various aspects mentioned in the two work memos which had been filed before the Commissioner. The learned Munsiff rightly found that the work memos were unauthorised and that they were submitted without any specific direction by the court in that regard. The court below has noticed that if the defendants wanted the Commissioner to report on any aspect not covered by the commission application, it is for them to make an application in that regard and if the court finds that the aspects upon which the defendants seek a report is relevant, the

court below may be inclined to allow the application. The report was sought to be set aside also on the ground that the property in question had not been identified properly by the Commissioner. The learned Munsiff has repelled this ground giving reasons. The third reason upon which the report was sought to be set aside was that the F.M.B. of survey No.957 and the B.T.R. were not obtained from the Village Officer and as such the Commissioner conducted measurement without relying on such documents. The Village Officer who was examined as C.W.2 in fact supported the case of the defendants on this aspect. But the Commissioner in cross-examination would clarify that it is true that the Village Officer had not given the F.M.B. and the B.T.R. But the plaintiff at whose instance the commission was taken out had placed before him certified copies of the documents which he had obtained from the Survey Superintendent. If the defendants even now maintains that the Commissioner's version that measurement was conducted on the basis of the certified copies of the documents issued to the plaintiff by the Survey Superintendent is not correct, it is open to the defendants to establish this aspect at trial. The last ground on which the report was sought to be set aside was that the property was not measured

on the basis of the re-survey records. The learned Munsiff noticed that there was no prayer in the commission application for measuring the property with the help of the re-survey records and therefore the measurement of the properties without reference to the re-survey records was in conformity with the prayer in the commission application. As for this grievance also the observations of the learned Munsiff that if any of the parties submit an application, such application will be considered and if found relevant will be allowed, in my opinion, will redress the grievance of the petitioners. There is no warrant as such for interfering with Ext.P6 order.

The Writ Petition will stand disposed of subject to the above observations. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**